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In re Application of
Frances Yen et al
Application No. 09/751,877
Filed: December 28, 2000
Attorney Docket No. 89.US3.REG

:
: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) & (a)(6)
:

OFFICE OF PETITIONS

This is a decision on the petitions under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6), filed January 26, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) and 35 U.S.C. § 119 for the benefit of priority to prior-filed nonprovisional, PCT applications, and provisional applications set forth in the amendment (and Application Data Sheet (ADS)) submitted concurrently with the instant petition.

The petitions are **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant application was filed on December 28, 2000 and was pending at the time of filing of the instant petition. A reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). *See 35 U.S.C. §§ 120 and 365(c) and § 119(e).* Accordingly, having found that the instant petition satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 365(c) and § 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claims to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claims for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claims to the prior-filed applications, accompanies this decision on petition.

The statement of unintentional delay presented does not comply with the provisions of 37 CFR 1.78(a)(3)(iii). Nevertheless, the statement presented will be accepted and construed as meaning that "the entire delay between the date the claim was due and the date the claim was filed was unintentional."

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 1614 for appropriate action on the amendment submitted January 28, 2004, including consideration by the examiner of the claim under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(2) for the benefit of the prior-filed nonprovisional and PCT applications, and for consideration of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional applications.

Frances Hicks
Frances Hicks
Petitions Examiner
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ATTACHMENT: Corrected Filing Receipt